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EXAMINER

COSIMANO, EDWARD R

ART UNIT PAPER NUMBER

3629

DATE MAILED: 12/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/877,159

Applicant(s)

BAGGETT, DAVID M.

Examiner

Edward R. Cosimano

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-46 and 52-55 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 and 52-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 08 June 2001 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 3629

1. Applicant should note the changes to patent practice and procedure:

A) effective December 01, 1997 as published in the Federal Register, Vol 62, No. 197, Friday October 10, 1997; and

B) effective November 07, 2000 as published in the Federal Register, Vol 65, No. 54603, September 08, 2000.

2. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. § 120/119(e) as follows:

A) An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR § 1.78(a)(2) and (a)(5)).

2.1 If applicant desires priority under 35 U.S.C. § 120/119(e) based upon a previously filed copending application, specific reference to the earlier filed application must be made in the instant application. This should appear as the first sentence of the specification following the title, preferably as a separate paragraph. The status of nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression "now Patent No. \_\_\_\_\_" should follow the filing date of the parent application. If a parent application has become abandoned, the expression "now abandoned" should follow the filing date of the parent application.

2.2 If the application is a utility or plant application filed on or after November 29, 2000, any claim for priority must be made during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. See 37 CFR § 1.78(a)(2) and (a)(5). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. § 119(e), § 120, § 121 and § 365(c). A priority claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(e), § 120, § 121 and § 365(c). The petition must be accompanied by (1) a surcharge under 37 CFR § 1.17(t), and (2) a statement that the entire delay between the date the claim was due under 37 CFR §

Art Unit: 3629

1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional. The petition should be directed to the Office of Petitions, Box DAC, Assistant Commissioner for Patents, Washington, DC 20231.

3. The drawings are objected to because

A) the following errors have been noted in the drawings:

(1) fig. 3B lacks the "NO" legend for box 52, note pages 10-11.

(2) fig. 4B lacks the "YES" legend for box 52, note pages 10-14.

3.1 A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3.2 Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

4. The disclosure is objected to because of the following informalities:

A) applicant must update:

(1) the continuing data on page 1,

with the current status of each of the referenced applications, e.g., --now abandoned--, or --now patent #?--, or --which is abandoned and now serial number #?--, etc.

B) the following errors have been noted in the specification:

(1) as can be seen in fig. 3B and from the context of the fourth paragraph of the amendment filed June 08, 2001 to pages 10-12, "If all C2 ... next airline 66 ... to get the next airline.", at line 4 of this paragraph "66" should be -68--.

(2) the specification lacks a statement of --I claim:-- (see MPEP 608.01(m)).

Appropriate correction is required.

5. The specification and drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in

Art Unit: 3629

correcting any errors of which applicant may become aware in the specification or drawings. Applicant should note the requirements of 37 CFR § 1.74, § 1.75, § 1.84(o,p(5)), § 1.121(a)-1.121(f) & § 1.121(h)-1.121(i).

6. Claims 18, 39 & 54 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6.1 In regard to claim 18, this claim lacks antecedent basis in base claim 14, for the "second set of constructed fares....". Note at claim 18, line 1, "16" should be --17--.

6.2 In regard to claim 39, this claim lacks antecedent basis in base claim 35, for the "second set of constructed fares....".

6.3 In regard to claim 54, this claim lacks antecedent basis in base claim 52, for the "second set of constructed fares....".

6.4 For the above reason(s), applicant has failed to particularly point out what is regarded as the invention.

7. 35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title".

7.1 Claims 1-42 & 52-55 are rejected under 35 U.S.C. § 101 because the invention as claimed is directed to non-statutory subject matter.

7.1.1 Although the instant claims recite:

1) a method, (claims 1-42 & 52-55), which has a practical application in the technological arts, and

2) which does not define either a computer program, a data structure, non-functional descriptive material, (i.e. mere data) or a natural phenomenon,

the instant claims merely define a series of steps to be performed on a computer.

7.1.2 In regard to claims 1-42 & 52-55, the invention as set forth in these claims merely describes constructing/determining a fare, however, as recited in these claims neither the

Art Unit: 3629

constructed/determined fare is tangibly used in a concrete manner so as to produce a concrete and tangible result with in the technological arts.

7.1.3 It is further noted that applicant has not claimed a specific process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, which is either altered or changed or modified by the invention recited in claims

7.1.4 It is further noted that applicant has not claimed either:

A) pre computer processing, since the claims fail to recited that the data, which originates from an unknown source, is manipulated or changed before it is processed, or

B) post computer processing, since the claims fail to recited that the data which represents the result of the claimed manipulation is either manipulated or used or changed by any device after it has been processed.

7.1.5 In view of the above, the invention of claims 1-42 & 52-55 merely manipulates the abstract idea of constructing/determining fares in regard to claims 1-42 & 52-55.

7.1.6 In view of the above, it is further noted that the invention of claims 1-42 & 52-55 lack a claimed practical application since the claimed invention, either:

A) does not have the functionality required to carry out the recited steps or functions of the claimed invention; or

B) is not used by any system or device or method outside of the claimed invention,

in a concrete and tangible manner, (note In re Beauregard 35 USPQ2d 1383 (CAFC 1995) and the associated claims of U.S. Patent 5,710,578; and State Street Bank & Trust Co. v. Signature Financial Group Inc. 47 USPQ2d 1596 (CAFC 1998)).

7.1.7 It is further noted that the type/nature of either the data or the calculated numbers does not affect the operation of the claimed invention and hence are considered to be non function descriptive material, (note In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983)).

7.1.7 Hence, claims 1-42 & 52-55 are directed to non-statutory subject matter.

Art Unit: 3629

8. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(c) Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

8.1 Claims 1-46 & 52-55 are rejected under 35 U.S.C. § 103(a) as being unpatentable over either Takiguchi (4,758,954) or Webber et al (5,021,953 or 5,331,546) or Hornick (WO 92/12492 or 5,270,921) or Hornick et al (5,255,184) or Odagaki et al (5,459,667) or Vance et al (EP 0762306 A2) or O'Brien (WO 99/01822) or Hamzaee et al.

8.1.1 In regard to claims 1-46 & 52-55, any one of Takiguchi ('954) or Webber et al ('953 or '546) or Hornick ('492 or '921) or Hornick et al ('184) or Odagaki et al ('667) or Vance et al ('306) or O'Brien ('822) or Hamzaee et al disclose a computerized travel planning system in which the cost of an itinerary is constructed/determined by summing the cost of each leg of travel included in the itinerary. Hence, in the systems of either Takiguchi ('954) or Webber et al ('953 or '546) or Hornick ('492 or '921) or Hornick et al ('184) or Odagaki et al ('667) or Vance et al ('306) or O'Brien ('822) or Hamzaee et al a customer wishing to travel from point A to point B and back to point A, where there is not a direct flight from point A to point B, would start at point A (an arbitrary of an airline) and travel to point A1, (a gateway) where point A1 would permit the traveler to continue on the next leg of the itinerary. From point A2 the traveler would travel to point A3 and so on until the final destination of point B (an other arbitrary/gateway) has been reached. Since it is well known and common as shown by each of

Art Unit: 3629

Takiguchi ('954) or Webber et al ('953 or '546) or Hornick ('492 or '921) or Hornick et al ('184) or Odagaki et al ('667) or Vance et al ('306) or O'Brien ('822) or Hamzaee et al, that cost of an itinerary is determined from this travel process which is used by travelers, it would have been obvious to one of ordinary skill at the time the invention was made that the systems of Takiguchi ('954) or Webber et al ('953 or '546) or Hornick ('492 or '921) or Hornick et al ('184) or Odagaki et al ('667) or Vance et al ('306) or O'Brien ('822) or Hamzaee et al include the use of arbitraries and gateways as recited in the claims.

8.1.2 In regard to the searching for particular flights, since it would be a waste of time and money to search the flight/fare data bases for flights/fares to places other than the origin and destination of the traveler, it would have been obvious to one of ordinary skill at the time the invention was made that the systems of Takiguchi ('954) or Webber et al ('953 or '546) or Hornick ('492 or '921) or Hornick et al ('184) or Odagaki et al ('667) or Vance et al ('306) or O'Brien ('822) or Hamzaee et al would search the flight/fare databases for only the airline or airlines which would result in valid itineraries that would meet the traveler's needs.

8.1.3 In regard to claims 22-46, since the systems of Takiguchi ('954) or Webber et al ('953 or '546) or Hornick ('492 or '921) or Hornick et al ('184) or Odagaki et al ('667) or Vance et al ('306) or O'Brien ('822) or Hamzaee et al are computerized, it would have been obvious to one of ordinary skill that these systems contain an operating program to control the computer to perform all of the required functions of the system.

9. The examiner has cited prior art of interest, for example:

A) either Expedia article or IBM Bulletin or Khavakh et al (6,192,314) or Takenami et al (JP 12-20590), which disclose the construction of fares based on the summation of the fare for each leg of an itinerary, but does not use previously stored itinerary if available.

10. The shortened statutory period of response is set to expire 3 (three) months from the mailing date of this Office action.



Art Unit: 3629

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Cosimano whose telephone number is (703) 305-9783. The examiner can normally be reached Monday through Thursday from 7:30am to 6:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss, can be reached on (703)-308-2702. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

11.1 The fax phone number for UNOFFICIAL/DRAFT FAXES is (703) 746-7240.

11.2 The fax phone number for OFFICIAL FAXES is (703) 305-7687.

11.3 The fax phone number for AFTER FINAL FAXES is (703) 308-3691.

12/15/02



Edward R. Cosimano

Primary Examiner A.U. 3629